IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 877 OF 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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AMBALAL MAGANLAL HALANI - Appellant(s)
Versus
MUSTAFFA NAZARMIYA SAIYAD & ORS. - Respondent(s)

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Appearance :
Shri Premal S. Raj for Appellant(s).
None for Respondent Nos. 1 – 2 though served.
Shri Narendra Jain for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 29/06/2007

ORAL JUDGMENT

The claimant, being aggrieved by the award dated 13th

December, 1982 passed by the learned Member, Motor Accident Claims Tribunal (Main), Rajkot in Claim Case No.7 of 1982, is before this Court seeking enhancement in the amount of compensation.

2. As the driver-owner of the vehicle and the Insurance Company have not filed any cross appeal or cross objections, it is not necessary for this Court to refer to the facts in detail; the Court shall confine itself to the question of quantum, so also to the question that whether the Insurance Company was rightly exonerated or should have been held liable.

3. Referring to certain judgments of this Court, Shri Premal S. Raj, learned Counsel for the appellant, submitted that burden was upon the Insurance Company to prove that the vehicle though was a goods vehicle but there was no permit to carry the passengers. According to him, the Insurance Company did not discharge the burden and therefore, the Tribunal below could not exonerate the Insurance Company.

4. Shri Jain, learned Counsel for respondent No.3, however, submits that the Insurance Company firstly tried that the records are produced through the owner, but, the owner informed that along with the permit, he had transferred the vehicle; the transferee was summoned, but, he said that he did not receive the original permit and

he had also transferred the vehicle; the second transferee was examined, who also stepped in the witness box and said that he did not receive any permit. The first transferee, so also the second transferee, had said that they were plying the vehicle as goods vehicle only. The Insurance Company thereafter summoned the clerk from the office of the Regional Transport Office, who appeared and stated that the permit in original is given to the party and they could not maintain the records.

5. Shri Jain submits that in view of the efforts made by the Insurance Company, it cannot be said that they did not discharge the burden in accordance with law. He, however, relies upon a judgement of the Supreme Court in the matter of ***New India Assurance Co. Ltd. vs. Vedwati & Ors.***, [***AIR 2007 SC 1334***], to contend that if passengers are carried for hire or reward in the goods vehicle, then, there is no liability of the Insurance Company. In the said matter, the Apex Court, after referring to as many as six judgements of the Supreme Court, came to the conclusion that if passengers are carried in a goods vehicle for hire or reward, the Insurance Company would stand exonerated. Bound by the said judgement and other judgements of the Supreme Court, I must hold that in the present case, the Insurance Company has been rightly exonerated.

6. Shri Raj, learned Counsel for the claimant, submits that the

learned Tribunal below, while assessing the monthly income, simply calculated the income which the claimant was earning at the time of the accident, but, did not take into consideration the future prospects. On being asked, Shri Raj submits that the claimant was a small grocer and was earning about Rs.500/- per month. He informed the Court that after the accident, he has closed his grocery shop and has joined as a Clerk with the Public Works Department on a monthly salary of Rs.560/-.

7. If the claimant had good prospects in the business, then, ordinarily, he was not required to leave the vocation and join the services. If for a sum of Rs.60/- in addition to what he was earning, he could join as a Clerk, then, the Tribunal below, in the opinion of this Court, was not unjustified in holding that his salary could be safely assessed at Rs.500/- per month. Loss of earning is not a concept in air, but, it has a nexus with the earning capacity of the person. In a given case, despite accident, when the earning capacity is not reduced, then, such person cannot be allowed compensation under the head of loss of future income. Such person would be entitled to certain amounts under the head of pain, shock and sufferings and/or future enjoyment and expectancy of life. Even in such cases, the Court is required to make a guesswork to come to the conclusion that ordinarily, what would be reasonable compensation.

8. In the present case, the claimant on the date of the accident, was earning a sum of Rs.500/- per month and after the accident, he started earning Rs.560/- per month. Rs.560/- at the best could be taken to be future prospects, but, the claimant, in fact, would not suffer any loss, rather future loss of income. He could not show to the Court that because of the accident, he was incapacitated, his capacity to earn was reduced and therefore, there was loss of income. In the present case, the facts are different, they show that there was no future loss of income, rather the claimant was happily placed with the Government as a Clerk.

9. Taking into consideration the totality of the circumstances, I am of the opinion that the learned Tribunal below was not unjustified in assessing the total income at Rs.500/- per month.

10. The appeal deserves to and is, accordingly, dismissed. No costs.

[R.S.Garg, J.]

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